

MEMORANDUM

MAY 10, 1984

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: CHAPTER 121A APPLICATION OF POST OFFICE SQUARE REDEVELOPMENT CORPORATION

On April 19, 1984, the Authority voted to authorize the Chief General Counsel to prepare a favorable Report and Decision on the above-captioned 121A Application.

The Project Area presently contains an operational, above-ground 950-car garage on 1.56 acres of land owned by the City of Boston and bounded by Congress, Pearl, Milk and Franklin Streets in the center of Boston's Financial District.

The Project consists of the acquisition of the land within the beforementioned area, the demolition of the existing garage and the construction of a new 6-level underground garage with parking for 1,400 vehicles. The ground level will be a landscaped urban park designed to encourage pedestrian use and provide the proper amenities for this purpose.

Authority staff have reviewed the application and related documents and have found that there is sufficient evidence in support of the Project to make those findings and determinations necessary to proceed with the approval of the Project.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled "Report and Decision on the Application of Subsidiaries of Friends of Post Office Square, Inc., for the Authorization and Approval of a Project under Massachusetts General Laws Chapter 121A, as amended, and Chapter 652 of the Acts of 1960, and for Consent to the Formation Pursuant to Said Chapter 121A of an Urban Redevelopment Corporation under the Name Post Office Square Redevelopment Corporation for the Purpose of Undertaking and Carrying Out of the Project", be and hereby is approved and adopted.

BOSTON REDEVELOPMENT AUTHORITY

REPORT AND DECISION ON THE APPLICATION OF SUBSIDIARIES OF FRIENDS OF POST OFFICE SQUARE, INC., FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AND FOR CONSENT TO THE FORMATION PURSUANT TO SAID CHAPTER 121A OF AN URBAN REDEVELOPMENT CORPORATION UNDER THE NAME POST OFFICE SQUARE REDEVELOPMENT CORPORATION FOR THE PURPOSE OF UNDERTAKING AND CARRYING OUT THE PROJECT.

A. The Hearing. A public hearing (the "Public Hearing") was held from 2:25 p.m. until 5:50 p.m. on December 15, 1983, and from 2:15 p.m. until 5:40 p.m. on January 19, 1984, in the offices of the Boston Redevelopment Authority (the "Authority"), at the New City Hall, Room 921, Boston, Massachusetts 02201, by the Authority on an application dated November 14, 1983 (the "Application"), filed by Programs for Parking, Inc., Parking Improvements, Inc., and Better Traffic, Inc., (collectively, the "Applicants") each of which is a Massachusetts corporation and a subsidiary of Friends of Post Office Square, Inc., a Massachusetts corporation, Norman A. Leventhal, President for authorization and approval of a redevelopment project (the "Project") under Massachusetts General Laws, Chapter 121A, and Chapter 652 of the Acts of 1960, as amended (sometimes collectively referred to herein as "Chapter 121A"), and for consent to the formation of Post Office Square Redevelopment Corporation (the "Corporation"). The Applicants submitted a letter of interest dated in August, 1983 with respect to the Project, such letter and accompanying materials were reviewed by the Authority staff, the Applicants filed the Application on November 14, 1983, and due notice of the Public Hearing was given by publication on December 1, 1983 and December 8, 1983, in the Boston Herald American, a daily newspaper of general circulation published in Boston, and by mailing postage prepaid in accordance with Rule 4 of the Authority's Rules and Regulations governing Chapter 121A

projects in the City of Boston (the "Authority Rules and Regulations"), and in accordance with the provisions of Section 13 of Chapter 652 of the Acts of 1960, as amended. Robert L. Farrell, Chairman of the Authority and Joseph J. Walsh, James K. Flaherty, Clarence J. Jones, and William A. McDermott, Jr., members of the Authority, were present throughout both days of the hearing.

B. The Project. The Project consists of the acquisition of the Project Area (as defined below) by the Corporation by purchase, lease or the exercise of the power of eminent domain, demolition of the parking garage presently located on the site, construction of a new underground parking garage and creation of a major new public park at grade level, as more fully described in the Application. The parcel on which the Project is to be located (the "Project Area") consists of approximately 1.56 acres in the center of Boston's Financial District bounded by Congress Street, Franklin Street, Pearl Street, and Milk Street. The Project Area is more particularly described as follows:

A certain parcel of land situated at Congress Street, Milk Street, Pearl Street and Franklin Street, Boston Proper, bounded and described as follows:

- Southwesterly by Congress St. eight (8) dimensions,
ninety-eight and 35/100 (98.35) feet,
forty-five and 27/100 (45.27) feet,
fifty-eight and 44/100 (58.44) feet,
twenty-nine and 97/100 (29.97) feet,
thirty-six and 67/100 (36.67) feet,
forty-seven and 96/100 (47.96) feet,
forty-seven and 31/100 (47.31) feet,
forty-seven and 31/100 (47.31) feet;
- Southeasterly by Franklin St. two (2) dimensions,
ninety-five and 70/100 (95.70) feet,
one hundred nineteen and 50/100 (119.50) feet;
- Northeasterly by Pearl St. four (4) dimensions,
fifty-one and 20/100 (51.20) feet,
twenty and 50/100 (20.50) feet, one hundred
seventeen and 83/100 (117.83) feet, one
hundred forty-nine and 20/100 (149.20) feet;
- Northerly by Milk St. one hundred thirteen and 80/100
(113.80) feet;

Containing approximately sixty-seven thousand eight hundred ninety-nine (67.899) square feet.

The Project Area consists of Parcels 1 through 6 on a plan marked "Plan showing land for off-street parking facilities under authority of the Legislature, Chapter 474 of 1946 and Chapter 79 of the General Laws -- City of Boston, Congress St., Milk St., Pearl St., Franklin St., Boston Proper, June 21, 1950, James W. Haley, Chief Engineer, Street Laying-Out Department" on file with the office of the Real Property Board.

A map showing the location of the Project Area is included in the Application as Appendix 1.

The proposed underground parking garage will provide parking for approximately 1,400 cars and will be designed and maintained in accordance with the most modern standards. Such design and maintenance will, among other things, minimize on-street queuing of arriving vehicles during peak hours in order to lessen vehicle crossing conflicts at nearby intersections, and provide adequate lighting and other security features sufficient to allow safe 24-hour use of the garage. Floor plans, sections and certain design specifications for the proposed underground garage are included in the Application as Appendix 4. At grade level, a public park, with trees, flowers, grass and benches, will be constructed in accordance with the design specifications provided in Appendix 4.

C. Authority Action. In passing upon the Application, the Authority has considered the Application itself, all documents, plans and exhibits filed therewith or referred to therein, the oral evidence presented at the Public Hearing, the Exhibits offered as evidence at the Public Hearing, the arguments and statements made at the Public Hearing, an inspection of the Project Area

by members of the Authority on January 27, 1984, the report on the structural inspection of the Post Office Square Garage by Simpson Gumpertz & Heger, Inc., the Authority's consulting engineers for the Project, dated March 3, 1984.

D. The Project Area. The Project as defined in the Application constitutes a "Project" within the meaning of Section 1 of Chapter 121A providing, as it does, for the acquisition, construction, and the operation and maintenance of decent, safe and sanitary commercial and recreational facilities in a decadent area. The Project Area is a "Decadent Area", as that term is defined in Section 1 of Chapter 121A. In particular, based upon the evidence contained in the Application and presented at the Public Hearing, an inspection of the Project Area by the members of the Authority, and the report of Simpson, Gumpertz & Heger, Inc., consulting engineers, the parking garage presently located on the Project Area is physically deteriorated, out of repair, obsolete, and in need of major maintenance and repair. The garage is a poorly-lit structure with inadequate provisions for security. The outmoded design of the garage creates on-street queuing of arriving vehicles and the associated traffic congestion. As indicated in the report of Simpson Gumpertz & Heger, Inc., the steel reinforcing rods in the structural slabs are exposed and severely corroded at construction joints and at other locations, the column bases are cracked and in some columns reinforcing is exposed and corroded, the Limestone Ashlar panels that form the exterior walls exhibit spalling, and ramp areas and parapets are severely deteriorated. The physical condition of the parking garage presently located in the Project Area makes the Project Area detrimental to the safety, health, welfare and sound growth of downtown Boston and the Financial District.

There has been a substantial change in the business and economic conditions in downtown Boston generally and in the Financial District particularly

since the existing garage was constructed. This garage detracts from the improvements which have taken place in the area in recent years, and causes excessive traffic congestion in the area. The existing garage blocks pedestrian flows and discourages pedestrian activities in the area. A park on the Project Area will enhance street life in the area and realize the visual potential of the Project Area. A park on the site will become an important urban focus, and a modern underground parking facility will continue to serve the parking requirements for the Financial District and the City in an unobstructive manner. The appropriate long-term use of the space at grade within the Project Area is as open space, and that the appropriate long-term use of the subsurface portion of the Project Area is as a public parking facility.

There is inadequate light air and open space in the Project Area which is detrimental to the downtown area.

The benefits available under the Chapter 121A are needed in order for the Project to be carried out. Without the Chapter 121A tax benefits, it would not be possible to develop the subsurface portion of the Project Area as a parking garage and still leave space at grade as open space. The eminent domain power available under Chapter 121A is necessary in order to assure the acquisition of the Project Area for the Project.

These conditions and other factors referred warrant the carrying out of the Project in accordance with Chapter 121A.

E. Carrying Out The Project. The Application calls for the formation of an urban redevelopment corporation under the name of Post Office Square Redevelopment Corporation to undertake and carry out the Project. The Corporation will be controlled, through the ownership of all or a majority of the voting stock thereof, by Friends of Post Office Square, Inc. The Authority hereby consents to the formation of such corporation.

The Corporation will lease the Project Area pursuant to a ground lease to a partnership (the "Partnership"), to be created under the laws of the Commonwealth of Massachusetts. The Partnership will construct the Project and will operate and maintain or will cause to be operated and maintained the garage portion of the Project. The Corporation will maintain or caused to be maintained the grade-level park portion of the Project. The Corporation will control the development of the Project Area by the provisions of the ground lease, as provided in the Application. A summary of the proposed terms of the ground lease is included in the Application at Appendix 17. Any and all changes in the terms of the ground lease, as set forth in Appendix 17, shall be subject to the prior approval of the Authority.

The Partnership will be formed at the time the final Project financing is secured, and the terms and conditions of the Partnership agreement in addition to such related documents that the Authority may require, shall be subject to prior approval by the Authority.

The Corporation may institute proceedings for the taking of the Project Area by eminent domain under Chapter 80A of the General Laws. The Authority hereby finds that the use of eminent domain for the Project will be for the purpose of effecting a public improvement. The Authority hereby grants its approval for the Corporation to institute and fully effect proceedings for the taking of all fee and other interests in the Project Area (from whomsoever owned, whether the same be public or private entities) under Chapter 80A of the General Laws. The Board of Directors of the Corporation are hereby authorized to proceed as the board of officers for purposes of said Chapter 80A; provided that, the Corporation shall notify the Authority of any settlement agreements, orders or decisions relative to the proceedings under Chapter 80A.

The Corporation will make certain payments in lieu of real property taxes, as required under Chapter 121A. Subject to receipt by the Authority of approval in writing from the Department of Revenue, Commonwealth of Massachusetts, the Corporation will pay an annual excise under Section 10 of Chapter 121A in an amount equal to the sum of (i) one percent of the fair cash value (as determined by the City of Boston Assessing Department) of the real and tangible personal property of the Corporation and (ii) five percent of the gross income of the Corporation. In addition, the Corporation will make annual payments to the City of Boston pursuant to a contract entered into in accordance with Section 6A of Chapter 121A, and annual payments to a trust fund (the "Park Trust") established for the development and maintenance of parks in the City of Boston, also pursuant to the Section 6A contract. The amounts payable by the Corporation to the City of Boston and to the Park Trust shall be calculated pursuant to a Section 6A contract to be approved and executed by the City of Boston, which shall be substantially in accordance with the tax letter, dated December 14, 1983, incorporated herein by reference.

F. Cost of The Project. In the opinion of the Authority the cost of the Project has been realistically estimated in the Application and the Project is practicable. The Applicants' estimate of the cost of the Project is to be \$43,000,000. The financing of the Project shall proceed in the following manner:

1. The Corporation shall issue 11,000 shares of stock without par value, 1,000 of which shall be voting common stock and 10,000 of which shall be non-voting common stock. All voting stock shall, for other than cash consideration, be issued to Friends of Post Office Square, Inc. The non-voting stock shall be issued to one or more persons or entities contributing cash to the Corporation is upon receipt of its equity contribution.

2. The equity investment in the Project shall be for not less than 10% of the estimated cost of the Project and will consist of a combination of cash, services and materials or contracts for services and materials. Such services and materials, or contracts therefor, shall be contributed by, through, or on behalf of Friends of Post Office Square, Inc., and will consist of services and materials supplied or delivered prior to or after the filing of the Application. The cash portion of the equity investment shall in no event be less than \$2,000,000. The value of the services and materials, or contracts therefor, shall be as determined by the accountants for the Corporation, which shall be a nationally-recognized accounting firm approved by the Authority. The Corporation is hereby authorized to commence construction prior to receipt by the Corporation of the full amount to be paid for the stock, provided that, if receipt of the equity investment equal to not less than 10% of the cost of the Project does not occur within thirty-six months after issuance of a full building permit for the Project, construction shall not continue without the consent of the Authority.

3. The Authority hereby consents to the issuance by the Corporation of short-term secured debt to cover site acquisition and other interim costs and to the issuance of short-or long-term secured debt (which may be in the form of tax-exempt revenue bonds) which debt will be for not more than 90% of the cost of the Project. Such debt may be issued in two or more series.

G. Consistency With Master Plan. The Project does not conflict with the Master Plan for the City of Boston, as the Project Area comes within a classification in the Master Plan which permits commercial uses of the kind proposed by the Applicants.

H. Effect of The Project. The Project will not be in anyway detrimental to the best interests of the public or the City of Boston or to the

public safety and convenience, and is not inconsistent with the most suitable development of the Project Area neighborhood or of the City. The Project will, in fact, forward the best interests of the City and will constitute a major and significant public use and benefit. The Project will eliminate the conditions which cause the Project Area to be a decadent area within the meaning of Chapter 121A. The Project will replace poorly-maintained and deteriorating garage presently located in the Project Area and replace it with a larger, modern, underground parking facility which will reduce or eliminate the traffic congestion, and inconvenience to pedestrians associated with the present garage. The Project will also provide a park at grade level which will meet the needs of the area for open space and related amenities. The open space and related amenities provided by the Project exceed the amenities that would normally result from a downtown development project. The long-term use of the Project Area for open space at grade, as made possible by the Project, is the most desirable use of the Project Area in the relation to the overall economic and environmental requirements of the surrounding neighborhood.

The Project is consistent with the City of Boston's policies concerning downtown development, which include increasing short-term parking, and increasing open space and pedestrian movements. The Project will provide a vital link in the network of public open space leading from Downtown Crossing to the Boston Waterfront.

The Project will enhance the retail business environment by providing additional short-term parking for use by downtown shoppers. The Project will provide parking for 1,400 cars, as compared to the existing garage, which contains spaces for approximately 750 cars. All of the 1,400 parking

spaces in the proposed underground garage will be park and lock spaces. Final, detailed plans for the underground garage and for the park will be subject to continuing design review by the Authority.

The Project will also provide revenues to the City of Boston and to the Park Trust, which was established for the development and maintenance of parks in the City of Boston. Such amounts will be paid under Sections 6A and 10 of Chapter 121A, and are a part of the benefits from the Project.

The Project will have a positive economic impact on downtown Boston and on the City of Boston generally. During construction of the Project, construction jobs will be generated and the general contractor for the Project will be required, to the best of its ability, to grant preference in hiring to Boston residents.

The Project Area does not include land within any location approved by the State Department of Public Works for the extension of the Massachusetts Turnpike into the City of Boston.

1. Environmental Considerations. Pursuant to the provisions of Section 61 of Chapter 30 of the General Laws (as inserted by Chapter 781 of the Acts of 1972), the Authority hereby finds and determines that the Project will not result in significant damage to or impairment of the environment and further finds and determines that all practicable and feasible means and measures have been taken, or will be utilized, to avoid or minimize damage to the environment.

As a result of the investigations and report of the Authority's staff and of its own knowledge, the Authority hereby finds that:

1. The Project will not adversely affect any open space or recreation area or any aesthetic values in the surrounding area. Rather, the Project will create a new urban park and significantly improve the aesthetics of the area.

2. The Project will not adversely affect any archaeological or historical site, structure, or feature. Rather, it is expected that the Project will enhance the historic features of the area.

3. The Project will not adversely affect any significant natural or man-made feature or place but is determined to be compatible with the surrounding environment.

4. Being located in an urban area, the Project will not affect any wilderness area or area of significant vegetation and will not adversely affect any rare or endangered fisheries, wildlife or species or plants. Rather, the Project will add landscaping and vegetation to a densely built-up area.

5. The Project will not alter or adversely affect any flood hazard area, inland or coastal wetland, or any other geologically unstable area.

6. The Project will not involve the use, storage, release, or disposal of any potentially hazardous substances (except for the storage of gasoline in parked automobiles).

7. The Project will not affect the potential use or extraction of any agricultural, mineral, or energy resources.

8. The Project will not result in any significant increase in consumption of energy or generation of solid waste.

9. The Project will not adversely affect the quantity or quality of any water resources and will not involve any dredging.

10. Except necessarily during the construction phase, the Project will not result in the generation of a significant amount of noise, dust, or other pollutants, and will not adversely affect any sensitive receptors.

11. The Project will not adversely affect any area of important scenic value.

12. The Project will not conflict with any Federal, State, or local land use, transportation, open space, recreation, and environmental plans and policies. Rather, the Project is consistent with the City of Boston's policies concerning downtown development.

13. The Project will require deviations from the Zoning Code of the City of Boston as further detailed herein, but not in such a manner as will cause damage to the environment.

In order to avoid or minimize any damage to the environment, the Applicants shall comply with the following environmental conditions:

1. Construction and operation of the Project be undertaken in conformance with the mitigation program as outlined in Exhibit C of Attachment B of the Notice of Effect to Historic Properties, included as Appendix 13 of the application.

2. All construction work comply with the City's regulations for the control of atmospheric pollution and noise.

3. The Applicant's shall submit to the Authority for review wind and shadow studies, air quality and noise studies, and project design studies, as described in the aforementioned Exhibit C.

4. A parking rate structure be established which does not encourage the waiting and queuing of vehicles as currently exists during the A.M. peak hour.

5. A parking freeze permit be obtained from the City of Boston Air Pollution Control Commission in accordance with its regulations.

6. The Applicants submit to the Authority for review a plan which has the goal of encouraging ridesharing/vanpooling use of spaces (to a maximum of 1,400) in excess of 1,200 spaces.

7. No less than 350 spaces in the garage shall be assigned as short-term spaces.

8. Oil/grease traps shall be installed in all floor drains of the garage in order to prevent the discharge of these pollutants into the municipal sewer system, and such drains shall be properly cleaned and maintained.

9. Air exhaust vents from the garage shall be located so as not to cause any adverse effects on surface park users and other pedestrians and shall be so designed as not to become visual blight in the area.

J. Minimum Standards. The minimum standards for financing, construction, maintenance and improvement of the Project, as set forth in Appendix 18 to the Application, are hereby adopted and imposed as Rules and Regulations, in addition to those hereinafter adopted and imposed, applicable to this Project for the same period as the Project is subject to the provisions of Chapter 121A. The Corporation shall be required to proceed in accordance with the Development Schedule outlined in Section 5 of and Appendix 16 to the Application, which schedule may be extended with the prior approval of this Authority in the event of delays caused by judicial action required to exercise the power of eminent domain, or any appeal or related action, and which Schedule may be extended for a period equal to the period from January 1, 1984 until the date of final approval of the Application by the Mayor of Boston.

In addition to the minimum standards set forth in Appendix 18, the Authority hereby requires prior to obtaining a building permit that, (1) the Corporation and the Partnership shall enter into a Regulatory Agreement with the Authority containing such terms and conditions as the Authority may in its discretion deem necessary and appropriate, (2) the Corporation and the Partnership shall submit to the Authority for its review and approval all plans and specifications for the Project as the Authority may require and accept such changes and modifications thereto as the Authority may deem necessary

and appropriate, (3) the Corporation and the Partnership shall adhere to such design review controls and requirements as the Authority may in its discretion impose, and (4) the Corporation shall enter into negotiations with the City of Boston relative to the compensation due the City that may arise from any eminent domain taking under Chapter 80A.

The parking garage portion of the Project may be located within five hundred feet of a church, the Old South Meeting House. The Authority hereby determines that such garage will not be substantially detrimental to such church, but rather will benefit the church by reducing traffic problems in the area, and hereby grants a permit to the Applicants, the Corporation, and the Partnership for the erection, maintenance and use of such garage notwithstanding Chapter 310 of the Acts of 1922 or other provisions of law, as authorized by Section 13 of Chapter 652 of the Acts of 1960.

The Project does not involve the construction of units which constitute a single building under the State Building Code and zoning laws, General Laws, Chapter 138.

K. Zoning Code Deviations. The Authority hereby grants permission for the Project to deviate from Section 8-7, Use Item No. 59, and Section 6-3A of the Boston Zoning Code, to allow as a conditional use the construction and operation of an off-street parking garage within a restricted parking district, on the grounds that such permission may be granted without substantially derogating from the intent and purposes of the Boston Zoning Code.

L. Duration of Period of Tax Exemption. The Authority hereby grants approval of the Applicants' request for a 25-year extension to the period of exemption from property taxation pursuant to the provisions of Section 10 of Chapter 121A, as amended by Chapter 827 of the Acts of 1975, and Rule 2, B, 4 (e) of the Authority's Rules and Regulations, it being understood that

the total period of such exemption shall be 40 years. The Authority's approval of such request is based on the public amenities to be provided by the Project, as hereinafter set forth, and is granted on the condition that at the end of such 40 year period or after 5 years following the maturity of the Project short-or long-term debt, referred to in Section F(3) hereof, whichever occurs first, all right, title and interest to the Project (including without limitation the underground garage, the at grade park, air rights, utilities and easements) shall revert to the City of Boston for no consideration. Any refinancing of the Project short-or long-term debt shall be allowed only with the prior approval of the Authority and shall in no event result in any financial benefit or gain of any kind inuring to either the stockholders or officers of the Corporation or the partners, general or limited, of the Partnership. The public amenities include provisions for open space (the Project will provide a public park over nearly the entire Project Area), provisions for recreational and community facilities (the park will be completely open to the public and will be designed to invite pedestrian and community use), the incorporation of significant architectural features in the construction and design of the Project (the park will be designed as a landmark urban green with active central spaces blended with subdued quiet areas) and the incorporation of unusual features of design to overcome a factor which has contributed to the Project being a decadent area (the underground parking facility will necessarily involve unusual features of design and construction to provide underground, off-street queuing, a high degree of security, and unobtrusive ventilation and access structures at grade.)

The period of extension granted above may be shortened with the prior approval of the Authority, pursuant to the terms of a Section 6A contract between the City of Boston and the Corporation, as provided in Section 6A of Chapter 121A.

M. Decision. For all the reasons set forth in the foregoing report, the Authority hereby approves the undertakings by the Applicants of the Project pursuant to Chapter 121A, consistent with the findings, approvals, and provisions set forth above, and hereby consents to the formation of a corporation to be known as Post Office Square Redevelopment Corporation, for the purpose of carrying out the Project in conformity with this Report and Decision.